

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LEONITUS JABIR BEY,

C.A. NO.: 19-cv-10219- PBS

Plaintiff,

v.

DAVID PENDER,
Defendant

**DEFENDANT DAVID PENDER'S
MOTION FOR SUMMARY JUDGMENT**

Now comes the defendant and respectfully moves the Court for entry of summary judgment. As reasons therefore, the defendant states there are no genuine issues of material fact and summary judgment should be entered as a matter of law.

The plaintiff Leonitus Jabir Bey aka Leon Campbell was arrested and charged with resisting arrest, failing to stop for a police officer, negligent operation of a motor vehicle and other charges as a result of a motor vehicle stop in Lowell Massachusetts on January 22, 2019. This incident is the subject of the pro se plaintiff's complaint.

On September 4, 2019, after a jury trial in the Lowell Massachusetts District Court, the plaintiff was found guilty on the criminal charges except for one not guilty verdict, and one that was *nolle prossed*. Notably he was found guilty on the charge of resisting arrest and negligent operation of a motor vehicle. He was found responsible on two of the three non criminal civil motor vehicle infractions. The *pro se* plaintiff represented himself at the criminal trial and testified under oath.

Because the convictions arise out of the same incident which is the subject matter of the *pro se* complaint, the plaintiff is precluded from litigating these civil claims because the claims

necessarily imply the invalidity of the plaintiff's convictions. Heck v Humphrey, 512 U.S. 477, 114 S.Ct. 2364 (1994).

The suit is also precluded by judicial estoppel.

There was probable cause for the motor vehicle stop and the arrest. The defendant used reasonable force in subduing the combative plaintiff. For all the above reasons, the defendant respectfully requests that the *pro se* complaint be dismissed.

Although it is difficult to determine specifically what claims are being brought, a generous review of the *pro se* complaint indicates that the plaintiff has brought a claim of *Genocide*, 18 U.S.C. § 1091(e), a violation of the Massachusetts Declaration of Rights, unlawful arrest, and assault and battery. There also appears to be a due process claim under the Fifth Amendment of the United States Constitution. 42 U.S.C. § 1983 was not pled.

There is no plausible claim for genocide. No claim may be brought for a violation of the Massachusetts Declaration of Rights. Any federal claims and state tort claims should be dismissed pursuant to Heck. Federal courts have applied Heck to state claims.

The defendant is also entitled to qualified immunity as the uncontested facts indicate that a reasonable objective police officer in the position of the defendant faced with the same facts would not understand that he was violating the plaintiff's civil rights.

For all of the above reasons, the defendant respectfully requests that the complaint be dismissed. A memorandum in support of this motion is attached herewith along with a Concise Statement of Material Facts to Which the Defendant Contends There is No Genuine Issue to be Tried.

The defendant submits the following exhibits in support of the motion for summary judgment:

1. Affidavit of Fact and Incident Report of the *Pro Se* Plaintiff attached to his Complaint, Document 1-1;
2. Certified docket from the Lowell District Court in the case of Commonwealth of Massachusetts v. Leon J. Campbell, Lowell District Court Docket No. 1911CR000365;
3. Transcript of the jury trial in the case of Commonwealth of Massachusetts v. Leon J. Campbell, Lowell District Court Docket No. 1911CR000365 September 3, 2019;
4. Affidavit of David Pender;
5. Affidavit of Bradford N. Louison, Esq.;
6. Transcript of the deposition of the plaintiff, May 20, 2020.
7. Lowell Police Department Report.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

At the conclusion of the defendant's deposition taken by the *pro se* plaintiff on July 23, 2020, counsel for the defendant told the *pro se* plaintiff that it was his intention to file a motion for summary judgment on all counts unless the plaintiff wished to voluntarily dismiss the case. He declined.

The Defendant,

DAVID PENDER,

By his attorney,

/s/Bradford N. Louison

Bradford N. Louison, Esq. BBO#305755
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Louison, Costello, Condon & Pfaff, LLP
101 Summer Street
Boston, MA 02110
(617) 439-0305

Date: August 27, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused the foregoing to be served by first class mail to:

Leonitus Jabir Bey
P.O. Box 1934
Lowell, Mass 01854

/s/Bradford N. Louison

Bradford N. Louison

Dated: August 27, 2020